NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 17 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

LINDA SCHLECHT, as Personal Representative of the Estate of Barry Schlecht, Deceased,

Plaintiff - Appellant,

v.

AMERICAN POWER PULL CORP.; AMERICAN GAGE & MANUFACTURING CO.,

Defendants - Appellees.

No. 04-35785

D.C. No. CV-03-00005-M-LBE

MEMORANDUM[*]

Appeal from the United States District Court
for the District of Montana
Leif B. Erickson, Magistrate Judge, Presiding

Argued and Submitted January 10, 2006
Portland, Oregon

Before: KLEINFELD and GRABER, Circuit Judges, and RAFEEDIE[**], District Judge.

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] The Honorable Edward Rafeedie, Senior District Judge for the Central District of California, sitting by designation.

We review the district court's decision to admit the expert testimony for abuse of discretion.[1] The district court did not abuse its discretion. The expert provided an adequate basis for his testimony as to the metallurgical examination of the chain and his analysis of why the dynamic load on the chain would exceed the static load. His opinion that the load exceeded the figure he gave was based on inferences from determinations within his expertise.

Nor did the court err in denying plaintiff's motion for a directed verdict. The evidence must be viewed in the light most favorable to the party that prevailed at trial in evaluating the adverse party's claim that a directed verdict to the contrary should have been granted.[2] Here, the evidence permitted a reasonable jury to conclude as it did that the product was not defective.

The court did not abuse its discretion in admitting defendant's evidence about the manufacturing process. Plaintiff opened the door by introducing

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[1] See White v. Ford Motor Co., 312 F.3d 998, 1006 (9th Cir. 2002), amended, 335 F.3d 833 (9th Cir. 2003).

[2] See Amarel v. Connell, 102 F.3d 1494, 1517-18 (9th Cir. 1997).

evidence about the manufacturing process, and the evidence had probative value on the question of whether the product was likely to be defective.[3]

The issue of unreasonable use did not go to the jury, and even if it had, it would have made no difference, because the jury concluded that the product was not defective.

AFFIRMED.

[3] See Rix v. General Motors Corp., 723 P.2d 195, 200 (Mont. 1986).